

# EXHIBIT 26

Page 1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x  
4 ANNE DE LACOUR, ANDREA WRIGHT, and  
5 LOREE MORAN, individually and on  
behalf of all others similarly  
situated,

6

Plaintiffs,

7

-against- Civil Action  
8 No. 1:16-cv-08364

9

COLGATE-PALMOLIVE CO.,  
and TOM'S OF MAINE INC.,

10

Defendants.

11

-----x

12

July 17, 2018

13

9:42 a.m.

14

Videotaped Deposition of LOREE  
MORAN, taken by Defendants, pursuant to  
Notice, at the offices of Latham &  
Watkins LLP, 885 Third Avenue, New York,  
New York, before ERIC J. FINZ, a  
Shorthand Reporter and Notary Public  
within and for the State of New York.

21

22

23

24

1           it easier.

2           Q.       Did you feel that there was  
3       some problem with the -- with this kind  
4       product before you talked to anybody at  
5       Burson & Fisher, or was it only after you  
6       talked to them that you felt there was a  
7       problem?

8           A.       No, I felt there was a problem  
9       before.

10          Q.       Okay. So how is it that you  
11       figured out that there was a problem with  
12       the Kind Bars before you talked to your  
13       lawyers?

14          A.       I don't remember. I don't  
15       remember.

16          Q.       Do you remember anything about  
17       it at all?

18          A.       No.

19          Q.       Do you recall anything about  
20       what things on the package that you felt  
21       were incorrect?

22          A.       Not offhand without -- no, I  
23       don't.

24          Q.       So you don't remember what

Page 19

1 specific things about the kind packaging  
2 were problematic, and you don't remember  
3 in what way you figured out those  
4 statements were problematic. Is that  
5 accurate?

6 A. Yes.

7 Q. Okay. Let's talk about how  
8 you came to be a plaintiff in this case.  
9 Okay?

10 I understand that you had  
11 purchased Tom's deodorant products  
12 before. Is that correct?

13 A. Yes.

14 Q. Tell me about the -- when was  
15 the first time you purchased a Tom's  
16 deodorant product that's the subject in  
17 this case?

18 A. It was several years ago.

19 Q. How many years ago?

20 A. I don't know exactly.

21 Q. What's the best -- what's the  
22 most accurate range you can give me for  
23 when was the first time you purchased a  
24 Tom's deodorant product?

Page 20

1 A. 2015, 2016.

2 Q. And how do you know that?

3 A. I was specifically looking --  
4 it was a conversation in the faculty room  
5 where I teach regarding deodorants.

6 Q. And how does that help you  
7 recall that it was sometime in either  
8 2015 or 2016?

9 A. Because it was after school  
10 started. So that would have been  
11 September of '15, into '16. Sometime in  
12 that time frame.

13 Q. And so my question I guess is,  
14 do you have a specific recollection that  
15 it was September of 2015 or later that  
16 you had -- that you first purchased a  
17 Tom's deodorant product?

18 A. Yes.

19 Q. How do you know that it was  
20 2015?

21 MR. KOPEL: Objection; asked  
22 and answered.

23 You can respond.

24 A. Because I recall the

1 conversation, I recall other things that  
2 were going on at the time.

3 Q. Okay. Tell me what else you  
4 recall that was going on at the time you  
5 first purchased the Tom's deodorant  
6 that's at issue in this case.

7 A. There was another teacher in  
8 my building who she's extremely health  
9 conscious, and very knowledgeable about  
10 health issues, health products. There  
11 had been some literature at the time  
12 regarding -- regarding, I don't know, it  
13 was a finding at the time regarding  
14 deodorants, and we got into a whole  
15 conversation in the faculty room. She's  
16 a very passionate person, so she stands  
17 out in my mind.

18 Unfortunately she's no longer  
19 in my building, so that time frame, you  
20 know, I remember when she was there, my  
21 classroom had just been moved. So there  
22 were some things that -- I had been moved  
23 into her hallway so I was seeing much  
24 more of her.

1                   action complaint.)

2 BY MR. CALLAHAN:

3                   Q.       I've put in front of you what  
4       we've marked as Exhibit 3, which is  
5       entitled the declaration of Loree Moran.

6                   Do you see that?

7 A.       Yes, I do.

8 Q.       And is this a -- let me just  
9       ask, is it your signature on page 3 of  
10      Exhibit 3?

11 A.       That is.

12 Q.       And did you prepare this  
13      declaration for the purpose of this  
14      lawsuit?

15 A.       This appears to be the one,  
16      yes.

17 Q.       Okay. The declaration itself,  
18      your signature is on page 3, but the  
19      declaration itself is just pages 1 and 2  
20      of Exhibit 3. Do you see anything in  
21      here about your purchase of Tom's of  
22      Maine toothpaste?

23 A.       No, I didn't.

24 Q.       Why not?

Page 78

1 A. No particular reason.

2 Q. Is that one of the things that  
3 you're complaining about in this case, is  
4 the accuracy of the representations on  
5 Tom's of Maine's toothpaste products?

6 A. I was talking about the  
7 deodorant.

8 Q. Okay. But in this case are  
9 you also, you, Loree Moran, also  
10 complaining about Tom's of Maine's  
11 toothpaste products?

12 A. The toothpaste -- I was  
13 concerned with the deodorant.

14 Q. So you're not concerned with  
15 the toothpaste product?

16 A. Not specifically, no.

17 Q. Okay. Let me ask you to take  
18 a look at Exhibit 4. Which is the first  
19 amended complaint.

20 If you take a look, page 4,  
21 paragraph 8. Paragraph 8 relates to your  
22 specifics of this case as they relate to  
23 you. Is that correct?

24 A. That's correct.

1           Q.     And does paragraph 8 have  
2 anything -- paragraph 8 of Exhibit 4,  
3 which is the first amended class action  
4 complaint in this case, does that have  
5 anything to do with toothpaste?

6           A.     No, it doesn't.

7           Q.     Okay. Again, this reflects  
8 that your focus in this case is on --  
9 your concern in this case has to do with  
10 deodorant and not toothpaste. Correct?

11          A.     That's correct.

12          Q.     What type of toothpaste do you  
13 use now?

14          A.     I don't know the brand  
15 offhand. I don't know the brand offhand.

16          Q.     Do you know what kind of  
17 toothpaste it is?

18          A.     What do you mean?

19          Q.     Well, let me ask this  
20 question: Do you always buy the same  
21 toothpaste or do you buy whatever's on  
22 sale?

23          A.     I don't -- I'm not  
24 consistently using the same brand of

1 toothpaste, no.

2 Q. What brands of toothpaste have  
3 you used over the last say two years?

4 A. Colgate, Crest, what is it,  
5 Arm & Hammer baking soda toothpaste.

6 Q. So not natural toothpastes?

7 A. The Arm & Hammer baking soda I  
8 believe is the most natural.

9 Q. What about the Colgate and  
10 Crest?

11 A. No.

12 Q. And do you have -- well, let  
13 me take a step back.

14 Why not? Why don't you use a  
15 natural toothpaste?

16 A. No particular reason.

17 Q. Are you unconcerned with the  
18 ingredients that are in toothpastes?  
19 When I say toothpastes, I mean sort of  
20 mainstream toothpastes.

21 A. I'm not unconcerned. I'm not  
22 aware of any issues with mainstream  
23 toothpaste.

24 Q. When you say you're not aware

Page 132

1 litigation, are there documents that  
2 relate to the resolution of that  
3 litigation?

4 A. Yes.

5 Q. Okay.

6 MR. CALLAHAN: Counsel, we'll  
7 follow up with this, but we're  
8 going to ask for both of those  
9 documents.

10 (Request for production.)

11 BY MR. CALLAHAN:

12 Q. Can you go back, Ms. Moran, to  
13 Exhibit 4, it's the complaint, the first  
14 amended complaint in this case. If you  
15 take a look at paragraph 8, the last  
16 sentence there says, "In purchasing Tom's  
17 products Ms. Moran paid a price premium  
18 over and above other deodorants that did  
19 not purport to be natural."

20 Do you see that?

21 A. Yes.

22 Q. At the store that you  
23 purchased the Tom's of Maine deodorants  
24 from, Trader Joe's in Oceanside, New

1       York, what were the deodorants that did  
2       not purport to be natural? What was  
3       offered there?

4           A.       I don't know. I don't recall.

5           Q.       Do you know any of them?

6           A.       I think I already answered  
7       that this morning. I don't recall.

8           Q.       And maybe you answered this as  
9       well, what was the price premium over --  
10      of the Tom's product that you say you  
11      purchased over and above the other  
12      products that did not purport to be  
13      natural?

14           A.       Are you asking what the price  
15      premium is over -- on the Tom's product  
16      over other products I've purchased?

17           Q.       Well, I'm asking what it says  
18      in your complaint. This is your  
19      complaint. And I understand you've  
20      worked with your lawyers on that. It  
21      says, "In purchasing Tom's products,  
22      Ms. Moran paid a price premium over and  
23      above other deodorants that did not  
24      purport to be natural."

1                   So my first question is, what  
2                   are the other deodorants that are  
3                   referred to there, do you know?

4                   A.       As I said this morning, I've  
5                   used Secret, I've used Arid, I've used  
6                   Mitchum.

7                   Q.       Okay. And what is the price  
8                   premium of the Tom's product that you  
9                   purchased over and above any of those  
10                  products?

11                  A.       I don't know exactly.

12                  Q.       Do you know if there is a  
13                  price premium?

14                  A.       Yes.

15                  Q.       Do you know how much it is?

16                  A.       I've already said I don't know  
17                  an exact amount.

18                  Q.       And the products that you  
19                  referred to here, the other deodorants,  
20                  were those deodorants that were available  
21                  at Trader Joe's?

22                  A.       No.

23                  Q.       Were there -- do any of the  
24                  other deodorants that are referred to in

Page 135

1       paragraph 7 of Exhibit 4, were any of  
2       those products at Trader Joe's?

3           A.     Did I go now to paragraph 7,  
4       because you were on paragraph 8?

5           Q.     No, I'm still on paragraph 8,  
6       I'm sorry. If I misspoke I apologize.

7                   My question is this: The  
8       other deodorants that you referred to in  
9       the last sentence of paragraph 8 of  
10      Exhibit 4, were any of those products at  
11      the Trader Joe's in Oceanside?

12           A.     Not that I recall.

13           Q.     Okay. So your choice, I take  
14       it, was either buy the Tom's product at  
15       Trader Joe's or get one of those other  
16       deodorants that would have been, I take  
17       it, cheaper at a different store. Is  
18       that right?

19           A.     That would be correct.

20           Q.     Okay. And is that store CVS,  
21       is that where you typically had  
22       previously purchased deodorant products,  
23       or underarm protection products?

24           A.     CVS is one of the places I've

1 purchased those products, yes.

2 Q. Where else?

3 A. King Kullen, Target.

4 Q. Any others?

5 A. Stop & Shop.

6 Q. And at present you purchase  
7 your underarm protection products online.

8 Is that right? From Amazon.

9 A. Not exclusively.

10 Q. Where else do you buy it from?

11 A. I haven't purchased anything  
12 else recently, so my most recent  
13 purchases have been online.

14 Q. Have you purchased any of the  
15 Crystal, the Crystal deodorant product  
16 that you use now?

17 A. Um-hum.

18 Q. Have you purchased any of that  
19 other than Amazon?

20 A. No.

21 Q. So, and subsequent to your,  
22 when you stopped using the Tom's of Maine  
23 deodorant, have you used any other  
24 deodorant or underarm protection product

Page 137

1 other than the Crystal product available  
2 from Amazon?

3 A. I don't think so. I'm not 100  
4 percent certain.

5 Q. Let me ask you to take a look  
6 on page 9 of Exhibit 4, paragraph 24.

7 And there you say, "The term 'natural'  
8 means existing in nature and not made or  
9 caused by people, coming from nature."

10 Do you see that?

11 A. Yes, I do.

12 Q. Is that your definition of  
13 "natural"?

14 A. That is very -- that aligns  
15 and agrees with my definition of  
16 "natural."

17 Q. So not made by people, is what  
18 you say natural is?

19 A. No, I didn't say that.

20 Q. Well, that's what your  
21 complaint says. That's why I'm a little  
22 bit confused. Your complaint says, "The  
23 term 'natural' means existing in nature  
24 and not made or caused by people."

Page 138

1           A.       The product itself would need  
2       to be assembled by people, put in a  
3       factory, and that involves people. So  
4       it's a fine line, the question you're  
5       asking, the role of people in the  
6       creation of a product. Short of going  
7       outside and grabbing a leaf off a tree  
8       and rubbing it under your arms, people  
9       have to be involved somewhere. So the  
10      degree that people are involved is the  
11      question.

12                  So I'm not sure what you're  
13       asking. I mean, if you're asking me are  
14       people involved at all.

15                  Q.       I'm just reading what's in  
16       your complaint, Ms. Moran. I'm trying to  
17       understand what it is you're alleging  
18       here. And what you say is "natural means  
19       existing in nature and not made or caused  
20       by people." That sounds now like you're  
21       hedging a little bit on that. Is that  
22       the case?

23                  A.       I'm not hedging.

24                  Q.       Okay. So not made by people

1 and existing in nature is what "natural"  
2 means to you. Is that right?

3 A. Existing in nature, not made  
4 or caused by people. As in the  
5 development of a chemical, would be my  
6 understanding of that.

7 Q. So not made by people means --

8 A. This actually isn't my  
9 definition, it's the Miriam Webster  
10 Dictionary definition.

11 Q. I understand that. I see the  
12 citation to it. I thought that its  
13 presence in this complaint to which  
14 you're a party meant that you signed on  
15 to that.

16 But maybe I'll just ask it  
17 this way: Do you agree that that is a  
18 definition of "natural" that is useful in  
19 this case, not made by people?

20 A. Am I understanding that you're  
21 taking one part of the definition and  
22 using it as the whole?

23 Q. Well, let's use the whole  
24 thing. "Existing in nature and," right,

Page 140

1       you know as an educator, that means it  
2       has to be both of those things, that is,  
3       existing in nature, one of the things it  
4       has to be, and not made or caused by  
5       people. Right? And then there is a  
6       semicolon, "coming from nature," that's  
7       another way of saying the same thing,  
8       isn't it? Am I reading English  
9       correctly?

10           A.     Well, the following word is  
11       "or." So you have "and" and "or" within  
12       the same sentence. They are not mutually  
13       exclusive.

14           Q.     Okay. So are we looking  
15       really at just what follows "or," the  
16       "not having any extra substances or  
17       chemicals added, not containing anything  
18       artificial," is that what you're more  
19       focused on?

20           A.     No.

21           Q.     You're focused on both of  
22       them?

23           A.     I'm inclusive of all of it.

24           Q.     "Or" is disjunctive, right, it

Page 141

1 means one or the other?

2 A. Correct.

3 Q. Okay. So you could pick from  
4 those two, or you could say I agree with  
5 both of them as they're written. Which  
6 one is it?

7 A. I agree in essence with all of  
8 it as written.

9 Q. Okay. So you stand by the  
10 existing in nature and not made or caused  
11 by people, semicolon, coming from nature.  
12 Is that right?

13 A. Yes.

14 Q. Okay. And you think that  
15 that's the way other people think of  
16 natural in the context of underarm  
17 protection products. Is that right?

18 A. I can't speak for what other  
19 people are saying.

20 Q. Let me ask you, for purposes  
21 of this case you believe that this  
22 definition that you like of "natural,"  
23 "existing in nature, not made or caused  
24 by people; coming from nature," is

Page 142

1 representative of the way other people  
2 think of this. Is that right?

3 A. Yes.

4 Q. Let me ask you to look at page  
5 -- paragraph 25, which is on the next  
6 page of Exhibit 4. And there it says,  
7 "The United States Food and Drug  
8 Administration, FDA, has also issued  
9 guidance on the term 'natural' in the  
10 context of food," and then it goes on.

11 Do you see that?

12 A. Yes, I do.

13 Q. What does the food definition  
14 of "natural" have to do with the products  
15 in this case, if anything, in your view?

16 A. I'm not sure, except that the  
17 FDA, it's the Food and Drug  
18 Administration.

19 Q. Right.

20 A. So wouldn't they encompass  
21 other than food?

22 Q. Is deodorant, do you know if  
23 deodorant is regulated by the FDA?

24 MR. KOPEL: Objection; calls

Page 143

1 for a legal conclusion.

2 MR. CALLAHAN: It just calls  
3 whether you know.

4 A. I don't know.

5 Q. Okay. I take it we could  
6 agree that neither deodorant nor  
7 toothpaste are food. Is that right? You  
8 agree with me on that?

9 A. Yes.

10 Q. Okay, you can set that aside.

11 (Defendants' Exhibit 6 for  
12 identification, plaintiff Loree  
13 Moran's responses to defendants'  
14 first set of requests for  
15 admission.)

16 BY MR. CALLAHAN:

17 Q. Could you take a look at  
18 Exhibit 6, Ms. Moran, which is plaintiff  
19 Loree Moran's responses to defendants'  
20 first set of requests for admission.

21 And let me know if you  
22 recognize this document.

23 Have you reviewed Exhibit 6  
24 and do you recognize it, Ms. Moran?

Page 155

1 C E R T I F I C A T E

2 STATE OF NEW YORK )

: ss.

3 COUNTY OF NEW YORK )

4

5 I, ERIC J. FINZ, a Shorthand  
6 Reporter and Notary Public within and for  
7 the State of New York, do hereby certify:

8 That LOREE MORAN, the witness whose  
9 deposition is hereinbefore set forth, was  
10 duly sworn by me and that such deposition  
11 is a true record of the testimony given  
12 by the witness.

13 I further certify that I am not  
14 related to any of the parties to this  
15 action by blood or marriage, and that I  
16 am in no way interested in the outcome of  
17 this matter.

18 IN WITNESS WHEREOF, I have hereunto  
19 set my hand this 30th day of July,  
20 2018.

21   
22

23 ERIC J. FINZ

24